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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CESARIO VIZCARRA MEDINA,  
Plaintiff,  
v.  
CDCR, *et al.*,  
Defendants.

Case No. 1:22-cv-00764-ADA-EPG (PC)  
ORDER SETTING TELEPHONIC HEARING  
ON NOVEMBER 16, 2023, AT 2:00 P.M.  
REGARDING THE COURT'S SEPTEMBER  
26, 2023, ORDER TO SHOW CAUSE  
ORDER DIRECTING THE CLERK TO SEND  
A COPY OF THIS ORDER TO SUPERVISING  
DEPUTY ATTORNEY GENERAL  
LAWRENCE BRAGG, THE WARDEN OF  
CORCORAN STATE PRISON, AND THE  
LITIGATION COORDINATOR AT  
CORCORAN STATE PRISON

On September 26, 2023, the Court issued an order for the Warden of Corcoran State Prison to show cause why he or she should not be sanctioned for failure to comply with a court order. (ECF No. 28). The Court has received a response to the order to show cause. (ECF No. 29). The Court will hold a telephonic hearing on this matter on November 16, 2023, at 2:00 p.m.

**I. DISCUSSION**

Plaintiff Cesario Vizcarra Medina ("Plaintiff") filed a complaint on June 22, 2022, generally alleging that unidentified officers from the Investigative Services Unit ("ISU") used excessive force against Plaintiff during the process of removing Plaintiff from his housing unit so

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1 that Plaintiff could be interviewed by the ISU. (ECF No. 1). Plaintiff alleges that the use of force  
 2 caused a break in Plaintiff's healed arm, which had previously been surgically repaired. The  
 3 Court screened Plaintiff's complaint and found that it stated cognizable claims of excessive force  
 4 in violation of the Eighth Amendment against the Doe ISU Officers responsible for breaking  
 5 Plaintiff's arm. (ECF No. 6).<sup>1</sup>

6 On October 17, 2022, following Plaintiff's notice that he wished to proceed on the claims  
 7 found cognizable in the Court's screening order, the Court issued an order authorizing the  
 8 issuance of a subpoena *duces tecum* so that Plaintiff could seek document(s) that identify the Doe  
 9 Defendant(s). (ECF No. 10). The Court also set a deadline for Plaintiff to file a motion to  
 10 substitute named defendants in place of Doe ISU Officers 1-3. (*Id.*, p. 2).

11 Plaintiff completed and submitted the subpoena and necessary form. (ECF Nos. 11 & 14).  
 12 On December 1, 2022, the Court approved Plaintiff's requested subpoena, and directed service of  
 13 the subpoena on the Litigation Coordinator at Corcoran State Prison by the United States  
 14 Marshals Service. (ECF No. 15). Plaintiff's subpoena sought the following documents: "114d  
 15 Lock up order, Investigation Package, 1040 Form, Body inspection log, all reports regarding  
 16 rehousing, Sgt. Case's report, names of ISU officers who restrained Plaintiff." (ECF No. 15-1, p.  
 17 1). The Court directed the Litigation Coordinator to respond to the subpoena within twenty-one  
 18 days. (ECF No. 15, p. 2). However, the Litigation Coordinator was "only required to produce  
 19 documents that identify, or may reasonably help Plaintiff identify, the Doe ISU officer(s)  
 involved in this incident." (*Id.*)

20 On February 21, 2023, Plaintiff filed a request for a status of service of his subpoena for  
 21 documents to identify the Doe defendants. (ECF No. 16). Because no return of service had been  
 22 filed, the Court extended Plaintiff's deadline to file a motion to substitute named defendants in  
 23 place of Doe ISU Officers 1-3 to April 10, 2023. (ECF No. 17). The United States Marshals  
 24 Service personally served the subpoena on March 7, 2023. (ECF No. 18).

25 On March 25, 2023, the Litigation Coordinator e-mailed the Court an affidavit of no

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 27 <sup>1</sup> The Court separately issued findings and recommendations recommending that all other claims and defendants be  
 dismissed. (ECF No. 9). On June 1, 2023, the district judge issued an order adopting the Court's findings and  
 28 recommendations and dismissing all claims and defendants "except for Plaintiff's Eighth Amendment excessive  
 force claims against Doe ISU Officer1-3." (ECF No. 23).

1 records.

2 On April 26, 2023, the Court issued an order for Plaintiff to show cause “why the Court  
3 should not issue findings and recommendations to a district judge, recommending that this action  
4 be dismissed, without prejudice, because of Plaintiff’s failure to comply with a court order, failure  
5 to prosecute, and/or failure to comply with Rule 4(m).” (ECF No. 19, p. 2). The Court stated that  
6 it would vacate the order to show cause “if, in response, Plaintiff files a motion to substitute  
7 named defendants in place of the Doe defendants, files a motion to compel regarding the  
8 subpoena that was served on March 7, 2023, or files a motion for the issuance of a second  
9 subpoena for additional documents so that he can attempt to identify the Doe defendants.” (Id.)

10 In response to the Court’s order to show cause, Plaintiff filed a motion to compel  
11 Corcoran State Prison’s response to the March 7, 2023, subpoena. (ECF No. 22). The Court set a  
12 deadline for “[a]ny response or opposition to Plaintiff’s motion to compel.” (ECF No. 24). The  
13 Court did not receive a response or opposition to Plaintiff’s motion.

14 On August 8, 2023, the Court granted Plaintiff’s motion to compel. (ECF No. 25). As the  
15 Court stated,

16 While it appears that Corcoran State Prison has objected to the subpoena by an  
17 affidavit that indicates no responsive records were found, the Federal Rules of  
18 Civil Procedure allow the party who issued the subpoena to file a motion to  
19 compel. *HI.Q, Inc. v. ZeetoGroup, LLC*, No: 22cv1440-LL-MDD, 2022 WL  
17345784, at \*5 (C.D. Cal. Nov. 29, 2022) (“If a nonparty serves timely objections  
to a subpoena *duces tecum*, the issuing party may obtain an order from the district  
court where compliance is required compelling production or inspection pursuant  
to Rule 45(d)(2)(B)(i.”).

20 (*Id.*, pp. 3-4). The Court compelled production of “all documents that identify, or that may  
21 reasonably help Plaintiff identify, the DOE ISU officer(s) involved in this incident” or “a  
22 response indicating what efforts were undertaken to search for the documents and facts  
23 supporting its assertion that no responsive documents exist.” (*Id.*, p. 4).

24 The Court did not receive a notice of compliance from Corcoran State Prison or a  
25 response within the provided deadline. Accordingly, the Court issued an order for the Warden of  
26 Corcoran State Prison to show cause why sanctions should not issue for failure to comply with a  
27 court order. (ECF No. 28).

28 The Warden has now responded. (ECF No. 29). The Warden concedes the prison did not

1 file a response to the motion to compel. (*Id.*, p. 3). The Warden also concedes that it did not file a  
2 response to the order granting the motion to compel despite the Court setting a deadline for  
3 response. (*Id.*) The Warden filed a response only after the Court issued an order to show cause  
4 why sanctions should not issue and sent a copy of that order to a senior assistant deputy attorney  
5 general.

6 The Warden's response includes documents not previously identified or produced. (*Id.*,  
7 pp. 14-26). Among these documents are a CDCR form 114-D Administrative Segregation Unit  
8 Placement Notice regarding Plaintiff's ASU placement, (*id.*, pp. 17-21), and a Classification  
9 Committee Chrono regarding Plaintiff's release from the ASU, (*id.*, pp. 24-16). Additionally, the  
10 Warden includes a copy of a CDCR 1030 Confidential Information Disclosure Form related to  
11 the ISU investigation. (*Id.*, pp. 22-23). According to the Litigation Coordinator's supporting  
12 declaration,

13 [The CDCR 1030 Form] [ ] notes that confidential information was placed in Mr.  
14 Medina's file. This form was not provided earlier due to the form being dated  
15 November 9, 2023 for the October 8th, Investigation. Per CCR Title 15, Section  
16 3321, CDCR 1030 Confidential Information Disclosure Forms need to be  
17 completed and provided to the inmate within twenty-four hours of placement of  
18 confidential information in an inmates' central file, thus resulting in a failure to  
19 properly identify the request form.

20 (*Id.*, p. 9).

21 The Warden's response also includes a confidential report regarding the search of  
22 Plaintiff's cell performed by ISU and his placement into administrative segregation on October 8,  
23 2020. (*Id.*, pp. 14-16). However, this report is heavily redacted. The Litigation Coordinator  
24 asserts that "a redacted copy of this report has been provided to Mr. Medina which identifies the  
25 ISU officer involved in the cell search." (*Id.*, p. 9). Yet, the redacted portion produced to the  
26 Court does not explicitly identify any person who conducted the search or transported Plaintiff  
27 from his cell on October 8, 2020:

28 **Investigation**

29 On Thursday October 8, 2020, LADA Investigator Flannagan contacted ISU  
30 [redacted] ISU immediately conducted a search of inmate Medina (3B05-148) cell  
31 with negative results for a cellular phone or anything with victim's information.  
32 Inmate Medina was subsequently placed in Administrative Segregation (Ad-Seg)  
33 pending investigation. [Redacted].

1           **Conclusion**

2           [Redacted]. Inmate Medina will continue to be monitored. . .

3           (*Id.*, pp. 14-15). The Warden further provides that:

4           The Litigation Coordinator is in the process of searching for other documents  
5           referencing the October 8, 2020 cell search, and will provide copies of any  
6           documents located to the Plaintiff, redacted appropriately. (*Id.*). However, in the  
7           absence of a reportable incident, the California Department of Corrections and  
8           Rehabilitation does not maintain records documenting which officer(s) escort an  
9           inmate inside a prison. (*Id.* at 3:16-22.)

10           (*Id.*, p. 4).

11           The Warden has asked that no sanctions issue because, despite not responding to the  
12           Court's orders, there was no bad faith. The Warden also argues that Plaintiff has not incurred any  
13           costs or otherwise been prejudiced. However, again, the CDCR has not produced any documents  
14           identifying the Doe defendant(s) described by Plaintiff.

15           The Court notes the pressing nature of resolving this issue. The documents are being  
16           sought to identify the Doe ISU Officer(s) who was involved in the incident of alleged force  
17           described in Plaintiff's complaint so that service may issue, and this case proceed. Without such  
18           information, Plaintiff will not be able to substitute a defendant and Plaintiff's case, which has  
19           been pending over a year, will likely be dismissed. The current deadline for Plaintiff to file a  
20           motion to substitute named defendants in place of Doe ISU Officers 1-3 is November 27, 2023.  
21           (See ECF No. 28, p. 2-3). The Court has already extended this deadline several times. (See ECF  
22           Nos. 17, 24, 25). It cannot continue to do so indefinitely. See Fed. R. Civ. P. 4(m) ("[I]f the  
23           plaintiff shows good cause for the failure [to serve the defendant], the court must extend service  
24           for an appropriate period.").

25           **II. ORDER**

- 26           1. The Court sets a telephonic hearing on **November 16, 2023, at 2:00 p.m.** in Courtroom  
27           10 (EPG) before Magistrate Judge Erica P. Grosjean.<sup>2</sup> For telephonic participation, each  
28           party is directed to use the following dial-in number and passcode: Dial-in number 1-888-  
29           251-2909; Passcode 1024453.

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31           <sup>2</sup> The Court will issue a separate order and writ of habeas corpus to Plaintiff's current institution of confinement.

2. Further, the Clerk of Court is directed to send a copy of this order to Supervising Deputy Attorney General Lawrence Bragg, the Warden of Corcoran State Prison, and the Litigation Coordinator at Corcoran State Prison.

IT IS SO ORDERED.

Dated: October 18, 2023

/s/ Eric P. Groj